

Application No. 10/728,312
Amendment dated December 11, 2006
Reply to Office action of June 14, 2006

REMARKS / ARGUMENTS

Claims Pending

Claims 21 and 22 are pending.

Claim Objections

It is respectfully urged that the claim amendments made herein overcome the stated bases for objection.

Claim Rejections under 35 USC 112

The phrase “of the sort” has been deleted by amendment from the claims, thus overcoming the first stated ground for rejection under 35 USC 112.

The action asserts that claims 21 and 22 are indefinite because they recite (at lines 14-18 in claim 21 and at lines 11-15 of claim 22) that “said capsule chamber being configured to enable a capsule received therein to vibrate longitudinally” whereas both claims recite in their last line that there is essentially no transverse movement of the capsule within the capsule chamber.

The wording pointed to in the action is in fact not a proper basis for rejection under 35 USC 112.

It should be noted that claim 21 is in Jepson format. Everything recited in claim 21 above the last subparagraph describes prior art, and the last paragraph describes the improvement provided by the invention. In the prior art combination of capsule and inhaler transverse movement of the capsule within the capsule chamber was permitted. In the improvement according to the invention there are “raised elements on either the inner surface of said capsule chamber or the outer surface of said capsule, which raised elements align the axis of the capsule with the axis and the capsule chamber and which constrain the capsule, when it vibrates within the capsule chamber, to move back and forth along its longitudinal axis with

essentially no transverse movement.” Thus, to summarize, the prior art combination permits transverse movement of the capsule in the capsule chamber and the improvement of the invention provides structural features that permit essentially no transverse movement of the capsule within the capsule chamber.

Claim 22 is similarly in Jepson format. Everything recited in claim 22 above the last subparagraph describes prior art, and the last paragraph describes the improvement provided by the invention. In the prior art inhaler transverse movement of the capsule within the capsule chamber was permitted. In the improvement according to the invention there are “raised elements on the inner surface of said capsule chamber, which raised elements align the axis of the capsule with the axis of the capsule chamber and which constrain the capsule, when it vibrates within the capsule chamber, to move back and forth along its longitudinal axis with essentially no transverse movement.” Thus, to summarize, the prior art inhaler permits transverse movement of the capsule in the capsule chamber and the improvement of the invention provides structural features that permit essentially no transverse movement of the capsule within the capsule chamber.

There is no indefiniteness. By employing Jepson format, claims 21 and 22 very clearly point out the line of demarcation between the prior art and the improvement provided by the invention.

Claim Rejections – 35 USC 103

Claims 21 and 22 are rejected under 35 USC 103(a) as being unpatentable over Valentini et al. (US4069819) in view of Kladders et al. (US4899114).

These rejections are respectfully traversed for the reasons that follow.

As noted above, prior art inhalers, including that described by Valentini et al., permit transverse movement of the capsule in the capsule chamber whereas the improvement of the invention provides structural features that permit essentially no transverse movement of the capsule within the capsule chamber.

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Contrary to what is stated in the action, it seems clear that the raised elements of Valentini et al. limit longitudinal movement of the capsule, not transverse movement. The action points to Figure 5 of Valentini et al. wherein the capsule is clearly depicted as undergoing vertical movement, which necessarily has a pronounced transverse component. Yes, the device of Valentini et al. may include raised elements, but they are not adapted to limit transverse movement of the capsule, as they are in the improvement provided by the invention.

It would appear that the raised elements 7 of Kladders et al. are similarly adapted to limited longitudinal movement of the capsule within the capsule chamber, and not to limit transverse movement.

Thus, neither Valentini et al. nor Kladders et al. would appear to supply the motivation to modify the combination of capsule and inhaler of the prior art to yield the improved combination of claim 21 and the improved inhaler of claim 22.

Conclusion

It is respectfully urged that all grounds for objection or rejection of the claims have been overcome and that the two claims now pending are allowable and that the application as a whole is in condition for allowance.

Respectfully submitted,

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